

SERVICE DATE - APRIL 4, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34177 (Sub-No. 1)

IOWA, CHICAGO & EASTERN RAILROAD CORPORATION  
–TRACKAGE RIGHTS EXEMPTION–  
COMMUTER RAIL DIVISION OF REGIONAL TRANSPORTATION AUTHORITY  
OF NORTHEAST ILLINOIS AND SOO LINE RAILROAD COMPANY

MOTION FOR PROTECTIVE ORDER

Decided: April 2, 2003

By motion filed March 25, 2003, Iowa, Chicago & Eastern Railroad Corporation (IC&E) seeks a protective order under 49 CFR 1104.14(b) for a draft Trackage Rights Agreement, submitted under seal, between IC&E and Soo Line Railroad Company, d/b/a Canadian Pacific Railway (CPR). According to IC&E, the proposed protective order is necessary to protect commercially sensitive and confidential information contained in the draft Trackage Rights Agreement.<sup>1</sup>

At the same time, IC&E filed a notice of exemption under 49 CFR 1180.2(d)(7) for IC&E's acquisition of overhead trackage rights over a rail line of the Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois, d/b/a Metra (Metra) between Pingree Grove, IL, and Cragin Junction, Chicago, IL, and over certain connecting CPR trackage at Franklin Park, IL. IC&E filed the draft Trackage Rights Agreement between IC&E and CPR<sup>2</sup> under seal, as Exhibit 2 to the notice of exemption, subject to this request for a protective order.

Good cause exists to grant the motion for protective order. The motion conforms with the Board's rules at 49 CFR 1104.14 governing requests for protective orders to maintain the

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<sup>1</sup> IC&E states that the requested protective order would govern access to both the draft agreement submitted under seal and the executed agreement to be submitted at a future date.

<sup>2</sup> According to IC&E, pursuant to a separate contract between CPR and Metra, CPR has certain rights to admit a third party to use of the subject Metra line. IC&E states that CPR is admitting it to the Metra line as such a third-party user, and that the trackage rights agreement is solely between CPR and IC&E. IC&E advises that CPR's admittance of IC&E to the Metra line is with the consent of Metra.

confidentiality of materials submitted to the Board. Accordingly, the motion for protective order will be granted, subject to the Protective Order and Undertaking contained in the Appendix to this decision. Issuance of the protective order ensures that the railroads' confidential information will be used solely for this proceeding and not for other purposes.

It is ordered:

1. IC&E's motion for a protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.
2. The Confidential draft Trackage Rights Agreement submitted in STB Finance Docket No. 34177 (Sub-No. 1) will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the attached Undertaking is executed and the terms of the Protective Order are followed, or unless otherwise ordered by the Board.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, “Confidential Information” means the draft Trackage Rights Agreement between Iowa, Chicago & Eastern Railroad Corporation (IC&E) and Soo Line Railroad Company, d/b/a Canadian Pacific Railway filed under seal on March 25, 2003, in STB Finance Docket No. 34177 (Sub-No. 1), and any executed version of such agreement subsequently filed under seal in that docket.

2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to IC&E of the attached Undertaking. Confidential Information shall be used solely for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial or other competitive purpose.

3. Confidential Information shall not be disclosed in any way or to any person without the written consent of IC&E or an order of the Board, except to outside counsel or consultants of parties to these proceedings, solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such outside counsel or consultant has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.

4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on IC&E at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.

5. If the Board retains the Confidential Information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 CFR 1104.14.

6. If any party intends to use Confidential Information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information in accordance with the Protective Order.

7. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING

I, \_\_\_\_\_, have read the Protective Order governing the filing of Confidential Information by Iowa, Chicago & Eastern Railroad Corporation (IC&E) in STB Finance Docket No. 34177 (Sub-No. 1) and understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and preservation of evidence and argument in STB Finance Docket No. 34177 (Sub-No. 1) or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking, and that IC&E shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Position: \_\_\_\_\_

Affiliation: \_\_\_\_\_